

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BARKER CAPITAL LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04C-10-269 MMJ
)	
REBUS LLC, a Delaware limited)	
liability company, MARK A. FOX)	
and TWINLAB CORPORATION, a)	
Delaware corporation,)	
)	
Defendants.)	

ORDER

This 12th day of January, 2006, the Court having considered Plaintiff's Motion to Compel and for Sanctions, and the Defendants' opposition thereto,

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**.
2. Following consideration of Plaintiff's first motion to compel, the Court held that Defendants' interrogatories were "non-responsive, insufficient, and violative of Superior Court Civil Rule 33." The Court ordered Defendants promptly to "provide complete and responsive answers" and to "produce all non-privileged documents responsive to Plaintiff's First Request for Production." The Court expressly deferred any decision on attorneys' fees.

3. In response to Plaintiff's request for a Rule 30(b)(6) corporate designee to testify about specified topics, Defendant Mark Fox designated himself, but failed to adequately prepare himself to testify. Plaintiff filed its second motion to compel, seeking to compel the defendants to produce a proper Rule 30(b)(6) designee and again seeking an order compelling production of all responsive documents.

4. After hearing argument on the second motion to compel, the Court ruled that the defendants had failed to produce a properly-prepared Rule 30(b)(6) witness. Further, the Court observed that Defendants' witness had improperly asserted objections and repeatedly conducted himself inappropriately in the deposition. The Court found Defendant Fox to be "obstructionist," "arrogant," "rude at times," "insolent," "sarcastic," and "condescending."

5. After the Court granted Plaintiff's second motion to compel, Defendants produced for the first time certain corporate minutes and other documents. This production was after the close of discovery.

6. Defendants produced their general counsel, Richard Neuwirth, as a Rule 30(b)(6) witness. Mr. Neuwirth testified that, contrary to his affidavit previously filed on July 20, 2005, Defendants had failed to produce e-mails and other electronic documents from all available sources. Those documents finally

were produced following oral argument on the cross-motions for summary judgment.

7. Within 15 days, Plaintiff's counsel shall submit an affidavit setting forth the fees and expenses incurred in connection with the depositions of defendants Mark Fox, Rebus LLC and Twin Lab Corporation, and the preparation and presentation of the three motions to compel.

The Honorable Mary M. Johnston